

AMENDED IN ASSEMBLY MAY 26, 2005
AMENDED IN ASSEMBLY MAY 19, 2005
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CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 528

Introduced by Assembly Member Frommer
(Principal coauthors: Assembly Members Jones, Laird, and
Montanez)
(Coauthor: Assembly Member Gordon)

February 16, 2005

An act to add Title 2.5 (commencing with Section 3497) to Part 3 of Division 4 of the Civil Code, relating to civil actions.

LEGISLATIVE COUNSEL'S DIGEST

AB 528, as amended, Frommer. Civil actions: Public Health and Environmental Enforcement Law of 2005.

Existing law generally defines “nuisance” as anything that is injurious to health, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin, or any public park, square, street, or highway. Under existing law, the remedies for nuisances are indictment or information, civil action, or abatement, as specified. A public nuisance, as defined, may be abated by any public body or

officer authorized by law, or a private person if it is specially injurious to him or her.

This bill would authorize any person with a beneficial interest in the outcome to commence a civil action *against any person, except as specified*, to enforce specified laws, including regulations, permits, and orders issued pursuant to those laws, that provide for the protection or enhancement of public health or the environment. The bill would create the Public Health and Environmental Enforcement Fund, into which civil penalties awarded for these actions would be deposited for allocation, upon appropriation, to the state or local governmental entity, *as defined*, with the principal authority to enforce the statute under which the action was commenced for environmental enforcement or restoration of the environment in the most reasonable proximate vicinity of where the violation occurred.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Title 2.5 (commencing with Section 3497) is
2 added to Part 3 of Division 4 of the Civil Code, to read:

3
4 TITLE 2.5. PUBLIC HEALTH AND ENVIRONMENTAL
5 ENFORCEMENT LAW OF 2005
6

7 3497. (a) This title shall be known and may be cited as the
8 Public Health and Environmental Enforcement Law of 2005.

9 (b) The Legislature finds and declares as follows:

10 (1) California has been a national and world leader in adopting
11 measures to protect public health and the environment.

12 (2) The severe fiscal crises that have faced California
13 governments at all levels have severely reduced the enforcement
14 of environmental laws by public agencies.

15 (3) The lack of enforcement of laws to protect the public
16 health and the environment has resulted in exposure of the public
17 to increased risk of disease and of harm to the state's natural
18 resources.

19 (4) The federal government and 16 other states have laws that
20 allow personal enforcement of public health and environmental
21 laws. These laws have resulted in greater protection for public

1 health and the environment than can be achieved through public
2 enforcement alone.

3 (5) Personal enforcement allows those who are affected by
4 pollution and other environmental injuries to protect themselves,
5 their families, their property and resources that they utilize from
6 violation of laws intended to protect public health and the
7 environment.

8 (6) Personal enforcement of environmental laws should be
9 structured to provide the Attorney General with an exclusive
10 opportunity for the Attorney General to enforce public health and
11 environmental claims in the first instance, to intervene of right in
12 all proceedings brought by private parties, and to review all
13 private settlements.

14 (7) Personal enforcement should be limited to those who have
15 standing, and the judicial remedies available should be limited to
16 those that directly benefit public health and the environment.
17 Civil penalties obtained through personal enforcement should be
18 paid to public entities.

19 (8) Personal enforcement of public health and environmental
20 laws will lead to greater protection of both public health and the
21 environment.

22 3498. (a) Except as provided in subdivision (e), any person
23 with a beneficial interest in the outcome may commence a civil
24 action against any person, and against the United States, and any
25 officer, instrumentality, or agency of the United States, to the
26 extent the United States has waived sovereign immunity, but not
27 ~~against the State of California, or any of its officers, agencies, or~~
28 ~~political subdivisions, to enforce the following laws, including~~
29 ~~against the State of California or any local entity, or the officers,~~
30 ~~employees, or agencies of the state or any local entity, to enforce~~
31 ~~the following laws, including~~ regulations, permits, and orders
32 issued pursuant to those laws:

33 (1) Article X of the California Constitution.

34 (2) Provisions of the Fish and Game Code regulating any of
35 the following:

36 (A) Endangered, threatened, candidate, fully protected, or rare
37 species.

38 (B) Deposits of, or the passage of, material into water.

39 (C) Diversions, obstructions, or impediments of water that
40 affect the passage of fish.

1 (D) The alteration of streambeds.

2 (3) Provisions of the Food and Agricultural Code regulating
3 pesticides.

4 (4) Provisions of the Government Code regulating land uses,
5 but only in those instances where the owner or operator of the
6 land use also has a permit from the local air district or a permit
7 for discharge from a point source issued by the regional water
8 quality control board.

9 (5) Provisions of the Health and Safety Code regulating
10 hazardous substances, hazardous materials, and hazardous waste,
11 air emissions from stationary sources, poisons, radioactive
12 materials, drinking water, and medical waste, but not including
13 the provisions of Chapter 6.6 (commencing with Section
14 25249.5) of Division 20, which is enforceable pursuant to its own
15 separate enforcement provision.

16 (6) Provisions of the Public Resources Code that regulate
17 mining, oil and gas activity, forest practices, solid waste disposal,
18 and the release of waste into water, but not including Division 13
19 (commencing with Section 21000), Division 15 (commencing
20 with Section 25000), and Division 20 (commencing with Section
21 30000), which are enforceable pursuant to their own separate
22 enforcement provisions.

23 (7) Provisions of the Water Code that regulate the discharge of
24 waste into, or the degradation of, the waters of the state.

25 (b) The complaint for an action brought pursuant to this title
26 shall allege that the violations for which a remedy is sought are
27 either of the following:

28 (1) Threatened, repeated, or ongoing.

29 (2) A wholly completed act that is causing ongoing risk to
30 public health in excess of any requirement imposed by statute,
31 regulation, or permit, or ongoing impact to the environment in
32 violation of any requirement imposed by statute, regulation, or
33 permit.

34 (c) Any of the following measures of relief may be awarded
35 pursuant to this title:

36 (1) Civil penalties, as authorized pursuant to the law for which
37 enforcement is sought. ~~Notwithstanding this paragraph, civil~~
38 ~~penalties may not be awarded in an action brought pursuant to~~
39 ~~this title against the State of California, or any of its officers,~~
40 ~~agencies, or political subdivisions.~~

1 (2) Declaratory relief.

2 (3) Equitable relief, which may include, but is not limited to, a
3 prohibitory or mandatory injunction, and restoration of the
4 environment.

5 (d) Unless the law otherwise provides for civil penalties to be
6 deposited in a fund other than the general fund, civil penalties
7 awarded for an action brought pursuant to this title shall be
8 remitted to the Controller for deposit in the Public Health and
9 Environmental Enforcement Fund, which is hereby created.
10 Moneys in the fund, upon appropriation, shall be allocated to the
11 state or local ~~governmental~~ entity with the principal authority to
12 enforce the statute under which the action was commenced.
13 Notwithstanding any other law, moneys in the fund shall be used
14 exclusively for environmental enforcement or restoration of the
15 environment in the most reasonable proximate vicinity of where
16 the violation occurred. *A state or local entity receiving an*
17 *allocation of moneys from the fund may use a portion of those*
18 *moneys, as needed, to administer the environmental enforcement*
19 *or restoration activities.*

20 (e) (1) No action may be commenced pursuant to this title
21 prior to 60 days after the plaintiff has given notice, including the
22 identities of the then known prospective defendants, and request
23 for enforcement of the alleged violation to the Attorney General,
24 the agency ~~or political subdivision~~, *or the local entity* with
25 authority to enforce the statute that is alleged to be violated, and
26 the district attorney in whose jurisdiction the violation is alleged
27 to have occurred.

28 (2) If the Attorney General, ~~or the agency or political~~
29 ~~subdivision~~, *or the local entity* with authority to enforce the
30 statute that is alleged to be violated, has commenced and is
31 diligently prosecuting a civil action or administrative
32 enforcement order to compel compliance and impose penalties
33 based upon the same violation alleged in the notice given under
34 paragraph (1), no action may be commenced pursuant to this
35 title. Nothing in this paragraph prevents a court from granting the
36 person who provided notice under paragraph (1) permission to
37 intervene in the civil action filed by the Attorney General, the
38 agency, ~~or the political subdivision~~ *local entity*.

39 (3) Paragraphs (1) and (2) do not apply to actions where the
40 plaintiff seeks a temporary restraining order or a preliminary

1 injunction to enjoin activity alleged to be undertaken without, or
2 in violation, of a permit or circumstances that may constitute an
3 imminent and substantial endangerment to public health or the
4 environment.

5 (4) The Attorney General or the district attorney in whose
6 jurisdiction the violation is alleged to have occurred may
7 intervene as a matter of right in any action brought pursuant to
8 this title, but that intervention will not act as a bar to the
9 continuing action of the plaintiff.

10 (f) An action pursuant to this title may be brought in any court
11 of competent jurisdiction.

12 (g) (1) No settlement shall provide for the payment of money,
13 other than for attorney's fees, expert fees, and costs, by a
14 defendant to a plaintiff or a plaintiff's attorney unless that money
15 is dedicated to restoration of the environment or to mitigation of
16 environmental effects.

17 (2) No action brought pursuant to this title shall be settled
18 prior to 45 days following the receipt of a copy of the settlement
19 by the Attorney General.

20 (3) No action brought pursuant to this title shall be settled
21 without approval by a court. The court shall approve the
22 proposed settlement unless the court determines that the
23 settlement does not further a purpose of the statute that was
24 alleged to have been violated.

25 (h) The Attorney General is authorized to adopt regulations to
26 interpret or enforce subdivisions (e) and (g).

27 (i) (1) If the statute that is alleged to be violated has an
28 established administrative process that satisfies all of the
29 following criteria, then the party seeking to bring an action under
30 this title shall first exhaust the administrative remedy:

31 (A) There is jurisdiction over the prospective defendants.

32 (B) An adequate remedy exists for the alleged violation.

33 (C) The process is available to the party seeking to bring an
34 action under this title.

35 (2) If the administrative remedy is to request the governing
36 body of a public entity to enforce a statute, providing the notice
37 required by paragraph (1) of subdivision (e) shall constitute
38 exhaustion of the administrative remedy.

1 (j) Nothing in this section is intended to affect any rights or
2 remedies existing at law, including, but not limited to, actions for
3 professional negligence or personal injury.

4 (k) No civil action may be maintained pursuant to this title for
5 violations that are immaterial, trivial, or inconsequential.

6 (l) No action may be maintained pursuant to this title to
7 challenge the issuance of a permit by ~~a public~~ *the state or local*
8 entity.

9 3499. (a) A nonprofit corporation that has been recognized as
10 tax exempt under Section 501(c) of the Internal Revenue Code
11 has a beneficial interest in the outcome of an action if it, or one
12 or more of its members, has a beneficial interest in the outcome
13 of the action. Membership in the nonprofit corporation shall be
14 determined by reference to its bylaws.

15 (b) As used in this title, the following terms have the following
16 meanings:

17 (1) *“Local entity” means any local government, including any*
18 *city, county, city or county, school district, special district,*
19 *authority, or other political subdivision of, or within, the state.*

20 (2) *“Person” includes any person, firm, association,*
21 *organization, partnership, trust, corporation, company, the State*
22 *of California, and any of its officers, agencies, and political*
23 *subdivisions.*

24 ~~(2) of California, or any local entity, and the officers,~~
25 ~~employees, or agencies of the state or any local entity.~~

26 (3) *“Settled” or “settlement” includes any consent judgment,*
27 *stipulated judgment, settlement agreement, or any dismissal of*
28 *the action accompanied by a payment of money or other thing of*
29 *value.*

30 3500. The provisions of this title are not exclusive, and the
31 remedies provided for in this title are supplementary and in
32 addition to any other remedies provided under any other law or
33 available under the common law. If the remedies provided in this
34 title are duplicative of any other remedies available under any
35 other law or common law, the plaintiff shall elect which remedy
36 or remedies to seek.